1991

# The State of Utah v. James Douglas Tyler : Brief of Appellant

Utah Supreme Court

IN THE SUPREME COURT OF THE STATE OF UTAH

| | | |
|---|---|---|
| THE STATE OF UTAH, | : | |
| | : | |
| Plaintiff/Respondant, | : | |
| vs. | : | |
| | : | Case No. 910118 |
| JAMES DOUGLAS TYLER, | : | |
| | : | Priority No. 2 |
| Defendant/Appellant. | : | |

# BRIEF OF APPELLANT

Appeal from a final judgment and conviction against James Douglas Tyler for one count of Aggravated Arson, a first degree felony, in violation of Title 76, Chapter 6, Section 103, Utah Code Annotated (1953 as amended). The appellant was found guilty by a jury on November 29, 1990, in the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable Timothy R. Hanson, Judge, presiding. The final judgment and conviction were rendered on January 7, 1991, whereby Mr. Tyler was sentenced to an indeterminate term of 5 years to life at the Utah State Prison.

MANNY GARCIA
431 South 300 East #101
Salt Lake City, Utah 84111

Attorney for Appellant

R. PAUL VAN DAM
ATTORNEY GENERAL
MARION DECKER
ASSISTANT ATTORNEY GENERAL
236 State Capitol Building
Salt Lake City, Utah, 84114

Attorney for Respondant

**IN THE THIRD JUDICIAL DISTRICT COURT**
**IN AND FOR SALT LAKE COUNTY, STATE OF UTAH**

THE STATE OF UTAH,

Plaintiff,

vs.

JAMES DOUGLAS TYLER (USP)

Defendant.

AMENDED

**JUDGMENT, SENTENCE**
**(COMMITMENT)**

Case No. 901901330 FS
Count No. TIMOTHY R. HANSON
Honorable EVELYN THOMPSON
Clerk BUNNY NEUENSCHWANDER
Reporter JACK WEISS
Bailiff FEBRUARY 8. 1991
Date

☐ The motion of _____ to enter a judgment of conviction for the next lower category of offense and impose sentence accordingly is ☐ granted ☐ denied. There being no legal or other reason why sentence should not be imposed, and defendant having been convicted by ☒ a jury; ☐ the court; ☐ plea of guilty; ☐ plea of no contest; of the offense of AGGRAVATED ARSON, a felony of the 1 degree, ☐ a class _____ misdemeanor, being now present in court and ready for sentence and represented by S. McCAUGHEY, and the State being represented by M. VERHOFF, is now adjudged guilty of the above offense, is now sentenced to a term in the Utah State Prison:

☐ to a maximum mandatory term of _____ years and which may be for life;
☐ not to exceed five years;
☐ of not less than one year nor more than fifteen years;
☒ of not less than five years and which may be for life;
☐ not to exceed _____ years;
☐ and ordered to pay a fine in the amount of $_____;
☒ and ordered to pay restitution in the amount of $_____ to BE DETERMINED.

☐ such sentence is to run concurrently with _____
☐ such sentence is to run consecutively with _____
☐ upon motion of ☐ State, ☐ Defense, ☐ Court, Count(s) _____ are hereby dismissed.
☐ _____
☐ Defendant is granted a stay of the above (☐ prison) sentence and placed on probation in the custody of this Court and under the supervision of the Chief Agent, Utah State Department of Adult Parole for the period of _____, pursuant to the attached conditions of probation.
☒ Defendant is remanded into the custody of the Sheriff of Salt Lake County ☐ for delivery to the Utah State Prison, Draper, Utah, or ☐ for delivery to the Salt Lake County Jail, where defendant shall be confined and imprisoned in accordance with this Judgment and Commitment.
☒ Commitment shall issue FORTHWITH.

DATED this 2 day of ~~FEBRUARY~~, 19 91

~~APPROVED AS TO FORM:~~
COPIES TO COUNSEL

Defense Counsel

DISTRICT COURT JUDGE
TIMOTHY R. HANSON

IN THE SUPREME COURT OF THE STATE OF UTAH

| | | |
|---|---|---|
| THE STATE OF UTAH, | : | |
| | : | |
| Plaintiff/Respondant, | : | |
| vs. | : | |
| | : | Case No. 910118 |
| JAMES DOUGLAS TYLER, | : | |
| | : | Priority No. 2 |
| Defendant/Appellant. | : | |

BRIEF OF APPELLANT

Appeal from a final judgment and conviction against James Douglas Tyler for one count of Aggravated Arson, a first degree felony, in violation of Title 76, Chapter 6, Section 103, Utah Code Annotated (1953 as amended). The appellant was found guilty by a jury on November 29, 1990, in the Third Judicial District Court in and for Salt Lake County, State of Utah, the Honorable Timothy R. Hanson, Judge, presiding. The final judgment and conviction were rendered on January 7, 1991, whereby Mr. Tyler was sentenced to an indeterminate term of 5 years to life at the Utah State Prison.

MANNY GARCIA
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Salt Lake City, Utah 84111

Attorney for Appellant

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Attorney for Respondant

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## TABLE OF AUTHORITIES

### Cases cited

IN THE SUPREME COURT OF THE STATE OF UTAH

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|---|---|---|
| THE STATE OF UTAH,<br><br>Plaintiff/Respondant,<br>vs.<br><br>JAMES DOUGLAS TYLER,<br><br>Defendant/Appellant. | : | Case No. 910118<br><br>Priority No. 2 |

## STATEMENT OF JURISDICTION

Jurisdiction is conferred on this Court pursuant to Section 78-2-2(3)(i), Utah Code Annotated (1953 as amended), whereby the defendant in a criminal action may take an appeal to the Supreme Court from a final judgment of the District Court involving a conviction of a first degree felony.

## STATEMENT OF ISSUES

1. Were counsel for appellant ineffective in representing him to the extent that it was tantamount to actual and constructive denial of counsel?

## STATUTES AND CONSTITUTIONAL PROVISIONS

The texts of those statutes and constitutional provisions that do not appear in the body of the brief are included in Appendix A.

## STANDARD OF REVIEW

An ineffective assistance of counsel claim is usually a mixed question of law and fact. See State v. Templin, 805 P 2d 182 (Utah 1990), (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Questions of law can be independently reviewed. (See Templin at 187). Questions of fact will not be disturbed unless clearly erroneous (see id.)

The Strickland standard of review applies, wherein appellant must show that counsel's performance was deficient and that the deficiency prejudiced the appellant (See Templin at 186).

## STATEMENT OF THE CASE

This is an appeal from a judgment and conviction against James Douglas Tyler for one count of aggravated arson, a first degree felony, in violation of §76-6-103 Utah Code Annotated (1953 as amended). A jury found Mr. Tyler guilty as charged in the information on November 29, 1990, in the Third Judicial District Court, in and for Salt Lake County, State of Utah, the Honorable Timothy R Hanson, Judge, presiding. The final judgment and conviction were rendered on January 7, 1991 whereby Mr. Tyler was sentenced to an indeterminate term of 5 years to life at the Utah State Prison.

Appellant's trial counsel withdrew after filing the notice of appeal in this case, citing a conflict of interest based on appellant's claim of ineffective assistance of counsel. New counsel was appointed to prepare and submit appellant's appeal.

## STATEMENT OF FACTS

On July 1, 1990, police officers were called by Ms. Kathy Tyler to 525 East 800 South in Salt Lake City. The police spoke with Ms. Tyler, a resident of the house located there, whom they located next door at her neighbors's house. They also detained Mr. Tyler, the appellant, who was located nearby. (See Nov. 28 R. p. 94) Ms. Tyler entered her home after talking to the police. Shortly thereafter, there was a fire discovered burning in the kitchen area. The police called the fire department. Appellant was brought from an area in the rear of the house to the front. Some keys and Ms. Tyler's identification card were taken from him (R.102) and then he was arrested. The fire burned for about 5 minutes from the time it was discovered until the fire department put it out (R.109).

## SUMMARY OF ARGUMENT

Counsel for appellant was ineffective in their representation of appellant to the extent that appellant's entire defense was compromised. His constitution right to effective assistance of counsel was denied him and subsequently he did not receive a fair trial.

Appellant charges that not only was trial counsel ineffective, so too were the lawyers he had prior to the appointment of trial counsel. The attorney who conducted the preliminary hearing on August 16, 1990 had not spoken to appellant prior to that hearing.

The attorney originally assigned to the case spoke once with appellant on July 12, 1990. By the time trial counsel got the case the scene of the crime was cold and altered, and crucial evidence was no longer available. No one had investigated the case for appellant at all until October 15, 1990. Trial counsel could not adequately contest the States' evidence nor present sufficient evidence of his own to corroborate appellant's account of the facts. No one interviewed witnesses in a timely manner, no experts were summoned to dispute the State's experts. Appellant was denied the opportunity to present a coherent, substantial defense.

## POINT I

Counsel were ineffective in their representation of appellant in violation of his constitution guarantee to effective representation. Their ineffectiveness amounted to actual and constructive denial of counsel.

## INTRODUCTION

The information against appellant was filed on July 5, 1990. Appellant was appointed counsel shortly thereafter. Nancy Bergeson (hereinafter Bergeson) Salt Lake Legal Defender Association, was assigned the case. She made an appearance and a request for Discovery on July 9, 1990 (See Appendix B: Appearance of Counsel and Motion for Discovery). The County Attorney responded to that motion on July 16, 1990. (See Appendix B: Response to Discovery). Bergeson met with appellant once on July 12, 1990. Ms. Bergeson apparently went on vacation from sometime after July 12 until early August 1990. Bergeson requested that John Wennergren, MSW,

interview appellant in the jail, and he prepared a memorandum for Bergeson on July 27, 1990. (See Appendix B: Memorandum) Bergeson filed a motion to withdraw based on an office conflict of interest with appellant on August 3, 1990 (See Appendix B: Motion to Withdraw).

Appellant's preliminary hearing scheduled for August 2, 1990, was postponed because appellant had no attorney. The preliminary hearing was finally held on August 16, 1990. Ken Brown (hereinafter Brown) had been appointed to the case and he appeared on August 16. Appellant had never spoken to Brown prior to that hearing. The hearing culminated in a bindover to district court.

Appellant's district court arraignment set for September 10, 1990 was continued because appellant had no attorney. Brown had moved to withdraw because appellant had complained to the Utah State Bar about Brown. Appellant was finally arraigned on September 17, 1990. Stephen McCaughey (hereinafter McCaughey) appeared as counsel for appellant. Appellant had never met nor spoken to McCaughey prior to September 17. (See Sept 17 R. p. 3)

Appellant was asked to enter a plea and he responded that he'd like to talk to a lawyer (Id p.4). The judge did not appreciate appellant's responses, but it was established that McCaughey would meet with appellant and discuss his case the next day. McCaughey met with appellant 2 days later, 79 days after the fire.

No one investigated anything for appellant until October 15, 31, 1990, when McCaughey had some investigation done.

At appellant's pre-trial conference on October 1, 1990,

McCaughey stated he was awaiting transcripts of the preliminary hearing and that he had been "planning to get down to talk with" appellant (See Oct. 1 R. p.3-4.)

On October 17, 1990, McCaughey moved to continue the trial scheduled for October 18, because he and his investigator needed to " . . . check on some problem . . . with the fire investigation . . ." (now four months old). McCaughey did not know if the "scene " was still intact (see id). In fact, the "scene" had been repaired (See Nov. 29 R. P. 5) Appellant had been in jail 109 days. Trial was set for November 28, 1990.

## ARGUMENT

While ordinarily a claim of ineffective assistance of counsel must be addressed by collateral attack through habeas corpus proceedings, in limited circumstances the claim may be raised on direct appeal. State v. Johnson 176 Utah. Adv. R. 17. [Utah. C. App January 31, 1991 citing State v. Humphries, 818 P2d 1027, 1029 (Utah 1991)]. Those circumstances exist when there is new counsel on appeal and there is an adequate trial record. (See Johnson, at 18). That is the case here. This court may proceed to consider the merits of appellants claim.

Although there are no fact findings as to the ineffectiveness of counsel here, the records of what actually transpired allows this court to determine on appeal, as a matter of law, whether counsel's performance constituted ineffective counsel (See Johnson at 18, citing Government of Virgin Islands v. Zepp, 748 F 2d at

133-134.)

In Hollaway v. Arkansas, 435 U.S. 475, 479 (1977) the U.S. Supreme Court said that the right to effective assistance of counsel is "so basic to a fair trial that [its] infraction can never be treated as harmless error." (cited in Johnson at 18)

The Sixth Amendment to the United States Constitution guarantees an accused the right to effective assistance of counsel. In deciding ineffective assistance claims based on the federal constitution, this Court has relied on Strickland v. Washington 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed 2d 674 (USSC 1984) Strickland set out a two-part test:

First, the appellant must show that counsel's performance was deficient, meaning that errors were made so serious that counsel was not functioning as "counsel" guaranteed the appellant by the Sixth Amendment.

Second, the appellant must show that the deficient performance prejudiced him, meaning counsel's errors were so serious as to deprive appellant of a fair trial, a trial whose result is reliable. 466 U.S. at 687 (See also State v. Templin 805 P2d at 186, Utah 1990).

This Sixth Amendment right has been interpreted to mean "reasonable, effective assistance" (See id). Appellant carries the burden of meeting both parts of the test. (See id). Appellant must identify the "acts or omissions" which, under the circumstances, show that counsel's representation fell below an objective standard of reasonableness. Appellant must show there is a reasonable

probability that, but for counsel's unprofessional errors, the rest of the proceedings would have been different. A reasonable probability is one sufficient to undermine confidence in the outcome [See id 466 U.S. at 694; 805 p 2d at 187).

This court should consider the totality of the evidence, whether the errors affect the entire evidentiary picture or have an isolated effect, and how strongly the verdict is supported by the record (See id 466 US at 696;805 P 2d at 187)

However, in Sixth Amendment claims based on actual denial of counsel, constructive denial of counsel or conflicts of interest, prejudice is presumed (emphasis added). Se id 466 U.S. at 692; 805 P 2d 186 footnote 204).

The Strickland court said:

"Counsel can deprive a defendant of the right to effective assistance simply by failing to render adequate legal assistance." 466 U.S. at 692

Appellant contends that all the lawyers he had rendered such perfunctory assistance as to amount to actual denial of counsel in the case of Bergeson, and constructive denial in the case of Brown and McCaughey. Thus the prejudice prong of the Strickland test should be presumed here. Bergeson did nothing for the appellant while more than a month passed and the "scene" cooled. Then Brown appeared and conducted the preliminary hearing without the benefit of any preparation, investigation or contact with appellant. If the Circuit Court forced Brown to conduct the hearing that day, then the Court was a party to the constructive denial of counsel. Appellant insists those facts alone speak against reasonable,

effective assistance and representation.

McCaughey appeared on September 17 and met with appellant 2 days later. As of October 1, McCaughey had no other contact with appellant. He initiated an investigation on October 15, long after the "scene" had been repaired. His efforts were too little, too late, ineffective, and amounted to constructive denial of counsel.

Appellant contends Bergeson was ineffective for not arranging to have the "scene" investigated. She was not "functioning" as the counsel" guaranteed by the Sixth Amendment. It was actual denial of counsel during perhaps the most crucial time for discovery and consultation. The importance of immediate investigation in an arson case is obvious. The burn pattern, the point of origin, the presence or lack of accellerants, the possibility of other sources or causes of the fire, should be investigated by the defense at the scene, before it is cleaned up or repaired. Surely the state would be calling their arson investigator and "expert" to state his findings and opinions. No such investigation was conducted by the defense lawyers here. No one interviewed witnesses while the events were still fresh. No timely investigation was made of Ms. Tyler, the key witness.

At trial there was contradictory testimony regarding whether Ms. Tyler had called the police to report a fire or a disturbance or both (Nov. 28R p. 99; 157-158; 185). There were tapes made of the calls to the police dispatcher that would have clarified that issue but the tape was erased before McCaughey subpoenaed it (Nov. 29R p. 7) Since the State's own witness, Tennison, remembered Ms.

Tyler calling the police twice, once to report a fire, that tape became crucial to impeach Ms. Tyler and the police, corroborate appellant's testimony and support his theory that she may have started the fire and blamed him. The fire was small. It took the fire department 2 minutes to put it out. It burned for 5 minutes total. Ms. Tyler had a fire at her home two months prior and blamed appellant then too. She testified to having called the police on appellant once or twice when in fact she had called more that six times. It was not brought out that appellant was acquitted of previous false charges brought by her.

Appellant contends Ms. Tyler fabricated evidence 10 days after the fire (Nov 28 R p. 137-138;91-92) An investigation of those materials may have discredited Ms. Tyler. By the time McCaughey investigated, the evidence was gone.

There were fingerprints on the container that the state theorized contained the accelerant used in the fire. While they weren't appellants fingerprints (Nov. 28 R. P. 124) no effort was made to see if they were Ms. Tyler's or even if that particular accelerant was used.

Appellant had no trace of accelerant's about him upon his arrest, which seems unlikely if he poured liquids over various parts of the house after having been hit with a baseball bat hard enough that Ms. Tyler said she thought she had broken his ribs. (Nov. 28 R P. 169)

Appellants did not see any police reports or other discovery before his preliminary hearing. No one investigated his facts.

Bergeson failed to "function" as effective counsel during a most crucial phase and barely functioned at all as far as legal assistance to appellant. Brown was ill-prepared, "winged" the preliminary hearing, and then withdrew. McCaughey came too late, and his investigation was not timely and fruitless. This cumulative lack of reasonable effective representation prejudiced appellant. Insufficient defense was offered at his trial, and he did not have meaningful advice and assistance of counsel through critical stages of the proceedings.

Appellant contends he has shown that but for counsel's deficient performance, the results of the proceedings would have been different. This conviction is suspect. In view of the totality of circumstance appellant was denied reasonable effective representation. As the court said in Templin:

"If counsel does not adequately investigate the underlying facts of a case . . . counsel's performance cannot fall within the wide range of reasonable professional assistance 805 p2d at 188.)

Therefore, because counsel did not timely nor adequately investigate the underlying facts here, the first part of the Strickland test is met. (See id).

The second part of the test, prejudice, is presumed due to the showing of actual and constructive denial of counsel.

## CONCLUSION

For the foregoing reasons, appellant asks the Court to find he was denied reasonable effective assistance of counsel. Appellant

has identified acts and omissions of counsel that fell below an objective standard of reasonableness. Appellant has met the Strickland test.

Appellant asks this court to reverse his conviction and remand this case back to the district court for a new trial.

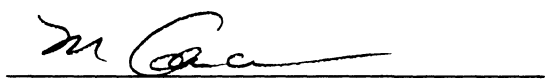
Dated this 4 day of February, 1992.

Respectfully submitted,

MANNY GARCIA,
Attorney for Defendant/Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that four (4) copies of the foregoing Brief of Appellant were delivered to the Attorney General's Office, 236 State Capitol, Salt Lake City, Utah 84114, this 4 day of February 1992.



# APPENDIX A

## TEXT OF CONSTITUTIONAL PROVISIONS

**AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES**

**AMENDMENT VI. [Rights of the accused.]**

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and the district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of counsel for his defence.

# APPENDIX B

NANCY BERGESON, #303
Attorney for Defendant
SALT LAKE LEGAL DEFENDER ASSOCIATION
424 East 500 South, Suite 300
Salt Lake City, Utah 84111
Telephone: 532-5444

IN THE THIRD CIRCUIT COURT IN AND FOR SALT LAKE COUNTY,

STATE OF UTAH, SALT LAKE DEPARTMENT

| | | |
|---|---|---|
| THE STATE OF UTAH, | : | APPEARANCE OF COUNSEL |
| Plaintiff, | : | |
| v. | | |
| JAMES DOUGLAS TYLER, | | Case No. 901007323FS |
| Defendant. | : | |

NANCY BERGESON, Salt Lake Legal Defender Association, on appointment of the above-entitled court, herewith enters an Appearance of Counsel of record for the above-named defendant.

DATED this 9th day of July, 1990.

Nancy Bergeson

NANCY BERGESON
Attorney at Law

DELIVERED a copy of the foregoing to the Office of the Salt Lake County Attorney, 231 East 400 South, Salt Lake City, Utah 84111 this _____ day of July, 1990.

_____

NANCY BERGESON, #303
Attorney for Defendant
SALT LAKE LEGAL DEFENDER ASSOCIATION
424 East 500 South, Suite 300
Salt Lake City, Utah 84111
Telephone: 532-5444

IN THE THIRD CIRCUIT COURT IN AND FOR SALT LAKE COUNTY,

STATE OF UTAH, SALT LAKE DEPARTMENT

| | | |
|---|---|---|
| THE STATE OF UTAH, | : | FORMAL REQUEST FOR DISCOVERY PURSUANT TO RULE 16 OF THE |
| Plaintiff, | : | RULES OF CRIMINAL PROCEDURE |
| v. | : | |
| JAMES DOUGLAS TYLER, | : | Case No. 901007323FS |
| | | JUDGE MAURICE D. JONES |
| Defendant. | : | |

COMES NOW the defendant, JAMES DOUGLAS TYLER, through his attorney, NANCY BERGESON, and requests the following material be provided to him as discovery no later than three days prior to the calendar call presently set for the 12th day of July, 1990. To-wit:

1. All police reports and investigations concerning the above-entitled case;

2. All recorded statements of the defendant and co-defendant(s), if any;

3. The criminal record of the defendant or felony convictions of any witnesses to be called by the prosecution;

4. All evidence tending to negate the guilt of the defendant;

5. All evidence tending to mitigate the guilt of the defendant;

6. All evidence tending to mitigate the degree of the offense for reduced punishment;

7. All physical evidence taken and all investigative analysis done on any evidence in the above-entitled case.

As provided in Rule 16, Section 77-35-26(5)(b), the State shall make all above disclosures as soon as practicable following the filing of charges and before the defendant is required to plead.

DATED this 9th day of July, 1990.

Respectfully submitted,

NANCY BERGESON
Attorney for Defendant

DELIVERED a copy of the foregoing to the Office of the Salt Lake County Attorney, 231 East 400 South, Salt Lake City, Utah 84111 this _____ day of July, 1990.

DAVID E. YOCOM
Salt Lake County Attorney
MARTIN VERHOEF Bar No. 3326
Deputy County Attorneys
231 East 400 South, Suite 300
Salt Lake City, UT 84111
Telephone: (801) 363-7900

---

IN THE THIRD CIRCUIT COURT, SALT LAKE DEPARTMENT

IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

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| | | |
|---|---|---|
| THE STATE OF UTAH, | ) | |
| Plaintiff, | ) | RESPONSE TO REQUEST FOR DISCOVERY |
| v. | ) | |
| JAMES DOUGLAS TYLER, | ) | Case No. 90107323FS |
| Defendant. | ) | Honorable |

---

Your general request for discovery cannot be honored pursuant to State v. Knight 734 P.2d 913 (Utah 1987). Please find enclosed copies of pertinent documents reflecting only what is contained in the prosecution file. Other documents may or may not exist in individual police agency files and you are directed to contact these agencies for such information.

The Deputy Salt Lake County Attorney will strictly comply with the mandates of Rule 16 of the Utah Rules of Criminal Procedure.

DATED this 16th day of July, 1990.

DAVID E. YOCOM
Salt Lake County Attorney

Martin Verhoef /s/
MARTIN VERHOEF
Deputy County Attorney

MEMORANDUM

DATE: July 27, 1990

TO: Nancy Bergeson

FROM: John Wennergren

RE: James Tyler

I interviewed Mr. Tyler in the Salt Lake County Jail on July 26, 1990. He is an extremely angry person who demonstrates his hostility readily. He was extremely upset that his attorney was on vacation while "he was sitting around in the jail." Mr. Tyler engaged in coherent and logical conversations during our interview and did not demonstrate any signs of a psychosis, a bipolar disorder, or any other serious mental illness. I suspect Mr. Tyler is an extremely inadequate individual who has learned to control and influence people around him by the use of his anger. I suspect he would be diagnosed as a personality disorder, perhaps an antisocial personality disorder. He tends to minimize his own involvement in the incident and takes a great deal of delight in blaming basically everything thing that's happened to him on his ex-wife. It is instructive to note that he was divorced from the victim approximately 1 1/2 years after their marriage. They were married in 1983. Despite this fact he continues to live off and on with her even though he lists a long series of incidents in which she has done him wrong. Mr. Tyler provided me with the attached list of demands which consists of information he feels we should be checking out in order to prove his wife is lying. He seems to feel this information will vindicate him.

Mr. Tyler basically seems to be a somewhat hystronic individual who seems to have adapted to living a "crisis" lifestyle.

JW:sh

p.s. This is the same client that Bob Steele had the altercation with in his office where he attempted to throw a chair at him. We conflicted his misdemeanor case out of the office to Joe Fratto because Mr. Tyler was trying to file attempted homicide charges against Bob. You will probably want to speak to Bob about this and also see if John Hill wants us to conflict this case out as well.

Sheri

NANCY BERGESON (#0303)
Attorney for Defendant
SALT LAKE LEGAL DEFENDER ASSOC.
424 East Fifth South, Suite 300
Salt Lake City, Utah 84111
Telephone: 532-5444

IN THE THIRD CIRCUIT COURT IN AND FOR SALT LAKE COUNTY,

STATE OF UTAH, SALT LAKE DEPARTMENT

| | | |
|---|---|---|
| THE STATE OF UTAH,<br><br>Plaintiff,<br><br>v.<br><br>JAMES TYLER,<br><br>Defendant. | :<br>:<br><br>:<br>:<br><br>:<br><br>: | MOTION TO WITHDRAW AS COURT APPOINTED COUNSEL AND NOTICE OF HEARING<br><br><br><br>Case No. 901007323FS |

F. JOHN HILL, Director of Salt Lake Legal Defender Association, and NANCY BERGESON, attorney for defendant, hereby move this Court for an Order allowing the Salt Lake Legal Defender Association to withdraw as court appointed counsel in the above entitled matter on the grounds that a conflict of interest presently exists between this defendant and the Salt Lake Legal Defender Association. It is further requested that KENNETH BROWN and RANDALL COX be appointed to represent the defendant in all future proceedings.

DATED this 3 day of AUGUST, 1990.

F. JOHN HILL, Director
Salt Lake Legal Defender Assoc.

NANCY BERGESON
Attorney for Defendant

TYLER, JAMES DOUGLAS F90-1690
Agg.Arson 1° 90 1007 323FS
RC: 7/12/90 9:30A JONES

ADDRESS

PHONE

RELEASE: AGENT:

ROLL CALL:

| Date | Time | Disposition |
|---|---|---|
| 7/12/90 | 9:30A | D requests PH. NB |
| 8-2-90 | 8:00 | (Fuchs) Cont |
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PRELIMINARY HEARING: JUDGE:

| Date | Time | Disposition |
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DISTRICT COURT ARRAIGNMENT: JUDGE: DC#:

| Date | Time | Disposition |
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MOTIONS & PRE-TRIAL CONFERENCE:

| Date | Time | Disposition |
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| | | |

Postponed
W/D
Brown
COP